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09/954801

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

March 24, 2006

Re: Decision on Petition to Withdraw Holding of Abandonment, dated January 26, 2006

**REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO
WITHDRAW HOLDING OF ABANDONMENT**

This is a request or petition to reconsider the decision dismissing the Petition to Withdraw the Holding of Abandonment submitted December, 14 2004.

The Decision indicates that the petition was dismissed because I failed to present a proper showing to overcome the presumption that the office action was properly mailed and therefore received. It was indicated in the decision that the presumption may be overcome by showing that the office action was not in fact received.

According to the decision, "the showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached and referenced in practitioner's statement."

The Decision also indicated that I should reference M.P.E.P § 711.03(c), which states the same requirement in the Decision.

I am representing myself as an individual, and as such, I do not have a docketing system and any type of postal log or records. I cannot therefore overcome the presumption in the recommended fashion.

It seems as if the suggested method to overcome the presumption is tailored only to practitioners. While it is reasonable to require a practitioner to provide such things, it is not reasonable to require such a showing from an individual inventor. For a practitioner that regularly maintains a record of incoming mail, it is a simple matter to produce the record.

However, given that an individual inventor does not have a docketing system, and therefore does not have any mechanism to log incoming mail, it is virtually impossible to meet the requirement that assumes an inventor is represented by a practitioner. For an individual, who like most individuals, simply opens his mail and reads it, it is not possible to overcome the presumption in the way dictated by the decision and the MPEP.

Therefore, I spoke with Mr. Jose Dees on March 20, 2006 about how, as an individual inventor, I could overcome the presumption that I received the Office action. He advised me to describe how I regularly treat correspondence from the Patent Office.

As an individual inventor, I can state that I diligently checked my mail during April and May of 2004, the timeframe when the office action should have arrived. As the Decision stated, the Office Action was mailed April 16, 2004. Every day upon returning home from the office or otherwise, I retrieved the mail from my mailbox before entering my home, and I did not receive the office action.

If I had received the office action or any other correspondence from the Patent Office, I would have placed it in a file I maintain for the subject patent application. However, as mentioned previously, I did not receive an office action from the Patent Office. I did, however, receive other bills and paid them in a timely manner. For example, I received my bill dated April 15, 2004, from the DISH network for satellite television, a copy of which is included with this Request.

In my petition, I stated that I was away for part of the summer of 2004. I would like to clarify the record regarding that issue. I was away on business during the June and July timeframe, not during the April and May timeframe. At the time I wrote the petition, I did not know the mailing date of the Office Action, as I had not received it.

If I had received the Office action, I would have responded in a timely fashion, as I did with my bills and other correspondence. I did reply to the Notice of Abandonment in a timely fashion (with the Petition that was dismissed), and this should indicate my propensity to timely respond.

Furthermore, I filed the Petition based upon the instructions of David M. Gray, the Examiner of the case. I informed him of the situation, and he was aware I was representing myself as an individual, and therefore did not have the benefit of a docketing system and postal log. He suggested that I file the Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181, as I did on December 14, 2004, in lieu of filing a petition to revive. He did not indicate that as an individual inventor I would have to provide any evidence that I did not receive my mail. As I understood it, my statement in the Petition would be sufficient.

I believe that my statement above and the accompanying bill should be sufficient to overcome the presumption that I did in fact receive the office action from the Patent Office. I have provided the bill in addition to the statement suggested by Mr. Jose Dees.

I am available to answer any questions the Patent Office may have, and to provide any other information it deems necessary in order to reconsider the Decision. Please call me at 415.706.5909 with any questions or requests.

Additionally, to the extent that Patent Office took over a year to reply to my Petition, I request that I not be prejudiced by such delay if I am now required to file a petition to revive the application.

Therefore, for all the reasons above, I respectfully request that the Patent Office reconsider its decision dismissing my petition of December 14, 2004.

Regards

A handwritten signature in black ink, appearing to read 'P. Mikhail', written in a cursive style.

Peter Mikhail



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ATTN: JOSE DEES
SPECIAL PROGRAM EXAMINER